HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.274 of 2007

Between:

Sk. Khaja

... Appellant

And

Ramavath Hari and another

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri A.M. Qureshi

Counsel for respondent No.1 : Shri M. Madhava Reddy

Counsel for respondent No.2 : Shri S.M. Subhani, Standing Counsel for Andhra Pradesh State Wakf Board

April 3, 2007

Per G.S. Singhvi, C.J.

This appeal is directed against order dated 14-3-2007 passed by the learned Single Judge in Writ Petition No. 2604 of 2007, whereby he quashed the grant of leasehold rights for purchasing goat skins, heads and legs of goats called Nazar-o-niaz, sale of coconut and collection of broken coconuts at Dargah, Janpahad Village of Nalgonda District to the appellant and directed that the same be offered to the writ petitioner (respondent No.1 herein).

Notice to the respondents for final disposal of the appeal. Shri M. Madhava Reddy accepts notice on behalf of respondent No.1. Shri S.M. Subhani, Standing Counsel for the Andhra Pradesh State Wakf Board (for short, 'the Board') accepts notice on behalf of respondent No.2.

With the consent of the parties, arguments have been heard on the merits of the appeal and the same is being disposed of by this judgment.

In response to the notification issued by the Andhra Pradesh State Wakf Board (for short, 'the Board'), which was published in the newspaper on 21-12-2006 for grant of leasehold rights for purchasing goat skins etc. at Dargah, Janpahad Village of Nalgonda District for the year 2006-2007, respondent No.1 Shaik Aziz Ahmed and ten others gave their respective bids. Shaik Aziz Ahmed gave bid of Rs.36,15,000/-, whereas respondent No.1 gave bid of Rs.36,10,000/-. Since the bid of Shri Shaik Aziz Ahmed was highest, the same was accepted by the Board. Subsequently, he i.e. Shaik Aziz Ahmed requested the concerned authority of the Board that, in his place, leasehold rights may be granted to the appellant, who was an existing contractor. The Board accepted the request of Sahik Aziz Ahmed. To this effect, proceedings
dated 7-2-2007 were issued. The appellant deposited Rs.10,00,000/- and also furnished two cheques of Rs.1,00,000/- each. Respondent No.1, who was the next higher bidder, withdrew the Earnest Money Deposit on 31-12-2006 i.e., the date on which the bid given by Shri Shaik Aziz Ahmed was accepted.

After about one month and five days of the grant of leasehold rights to the appellant, respondent No.1 filed Writ Petition No. 2604 of 2007 questioning the action of the Board. He pleaded that the Board

did not have the jurisdiction to grant leasehold rights to non-petitioner No.2, because he was not one of the bidders.

In the counter filed by Chief Executive Officer of the Board, who was impleaded as non-petitioner No.1, an attempt was made to justify the grant of leasehold rights to the appellant by making the following averments:

> "In reply to para-2 to 4, I submit that it is true that the Auction Notification has been issued for a period of one year i.e. 24.1.2007 to 23.1.2008 in the news papers on 21.12.2006, inter-alia, describing the auction conditions. As a matter of fact, in response to the said Auction Notification. About 12 persons approached the Board and obtained applications and also printed terms and conditions for the auction and subsequently they submitted their application and participated in the Auction. However, it is a fact that one Shaik Azeez Ahmed, has offered an amount of Rs.36,15,000/- (Rupees thirty six lakhs and fifteen thousand only) towards the auction of offering items of Dargah Hazarath Jan Pak Shaheed, Janpahad Village, NeredcherJa Mandal, Nalgonda District. And, accordingly, the Auction was knocked down in his favour for a period of one year i.e, 2007-2008. However, the offer made by the Writ Petitioner is the 2nd highest. Subsequently, in view of the negotiations the highest bidder has given no objections in favour of the 2nd Respondent herein, who is the existing contractor for the year 2006-2007. Keeping in view of the difficulties prevailed at the subject institution, the allotment was made in his favour and accordingly he has remitted Rs.10.00 lakhs and also furnished two cheques bearing Nos.355039 and 355038 in favour of this Respondent, drawn on State Bank of Hyderabad, worth of Rs.1.00 lakhs each and accordingly the Proceedings has been passed in his favour on 7.2.2007. Subsequently, the Writ Petitioner, along with other participants in the auction, has taken back his EMD amount i.e. D.D. bearing Nos:983262, 983267, 983273, 983284, 923876, 983261, and 983266."

The learned Single Judge did not accept the case set up by the

Chief Executive Officer of the Board and quashed the grant of leasehold rights to the appellant by observing that as a sequel to withdrawal of the bid given by Shaik Aziz Ahmed, the leasehold rights should have been offered to the writ petitioner because he was the next highest bidder.

Shri A.M. Qureshi, learned counsel for the appellant argued that the grant of leasehold rights to the appellant does not suffer from any legal infirmity because he was an existing contractor and stepped into the shoes of Shaik Aziz Ahmed. Learned counsel further argued that even if the grant of leasehold rights to the appellant was found to be vitiated due to violation of Article 14 of the Constitution, the learned Single Judge could not have ordained the offer of leasehold rights to the writ petitioner (respondentNo.1 herein), because he had withdrawn the Earnest Money Deposit on 31-12-2006, and as on 7-2-2007, he did not have any subsisting claim. Shi S.M. Subhani, learned counsel for the Board supported the argument of Sri A.M. Qureshi.

Shri M. Madhava Reddy, learned counsel for respondent No.1 conceded that his client had withdrawn the Earnest Money Deposit on 31-12-2006, but argued that the direction given by the learned Single Judge for offer of leasehold rights to his client's favour does not call for any interference because being the next highest bidder, he had legitimate right to the award of leasehold rights.

We have considered the respective submissions and are convinced that the directions given by the learned Single Judge to respondent No.2 to offer leasehold rights to respondent No.1 is legally untenable. At the cost of repetition, we deem it proper to mention that respondent No.1 had withdrawn the Earnest Money Deposit on 31-12-2006 and thereby lost his locus as a bidder for grant of leasehold rights. Thus, as on 7.2.2007 or 14.3.2007 he could not be treated as a

competitor in the matter of grant of leasehold rights. The learned Single Judge overlooked this important facet of the case. Therefore, the direction given by him that leasehold rights be offered to respondent No.1 is legally unsustainable and is liable to be set aside.

In the result, the appeal is allowed. The order under challenge is set aside to the extent direction has been given to respondent No.2 to offer leasehold rights to respondent No.1. The Board is directed to invite fresh bids for award of leasehold rights for purchasing goat skins etc at Dargah, Janpahad Village, Nalgonda District.

Before parting with the case, we would like to mention that the writ petition filed by respondent No.1 was not properly constituted inasmuch as the Board has not been impleaded as a party. The Chief Executive Officer of the Board is only a functionary of the Board and not the Board itself, which has a juridical personality and which can sue and be sued in its own name. In such matters, the Court cannot entertain the writ petition and pass order against statutory authorities without ensuring its impleadment as party.

As a sequel to disposal of the appeal, WAMP No.519 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

April 3, 2007

C.V. NAGARJUNA REDDY, J

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